CLERK'S COPY

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 246.

THOMAS G. BUSH, THOMAS A. GILLISPIE, AND ORION L. HURLBUT, AS TRUSTEES IN BANKRUPTCY OF THE SOUTHERN CAR AND FOUNDRY COMPANY, A BANKRUPT, PLAINTIFFS IN ERROR,

vs.

ELLIOTT CAR COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED APRIL 27, 1906.

(19,734.)

(19,734.)

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INDEX.

	Original.	Print.
Caption	1	1
Summons	2	1
Complaint	3	2
Objections to jurisdiction	6	4
Judgment	7	5
Bill of exceptions	8	5
Judge's certificate	8	6
Exhibit D—Motion to dismiss for want of jurisdiction	9	6
E—Judgment of dismissal	10	7
Petition for writ of error	11	8
Assignment of errors	12	9
Order allowing writ of error and certifying question of jurisdiction	13	9
Certificate of question of jurisdiction	14	10
Writ of error	16	11
Bond on writ of error	17	12
Citation	18	13
Proof of service of citation	19	13
Clerk's certificate	20	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 5, 1905.

1 Caption.

UNITED STATES OF AMERICA,
Northern District of Alabama, Eastern Division.

Pleas had at a regular term of the United States circuit court in and for the eastern division of the northern district of Alabama, begun and held in the county court rooms of Calhoun county, at Anniston, in said division and district, on the first Monday of November, it being the seventh day thereof, and of the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-ninth year.

Present: The Hon. Harry T. Toulmin, United States district judge, southern district of Alabama, presiding under order of designation made by Hon. David D. Shelby, United States circuit judge, fifth judicial circuit; Hon. W. H. Standifer, assistant United States attorney, D. N. Cooper, marshal; and Chas. J. Allison, clerk.

THOS. G. BUSH, THOS. A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company,

versus

ELLIOTT CAR COMPANY.

Be it remembered that heretofore, to-wit: on the 19th day of March, 1904, came Thos. G. Bush, Thos. A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car and Foundry Company, by their solicitors, and filed in the office of the clerk of said circuit court their original bill of complaint against the said Elliott Car Company, the respondent herein, and said bill of complaint was in words and figures following, to-wit:

2 Summons and Complaint.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

The President of the United States of America to the marshal for the said district, Greeting:

You are hereby commanded to summon Elliott Car Company, a body corporate who is a citizen of the State of Alabama, to appear before the honorable circuit court aforesaid, at the place of holding said court at Anniston, on the first Monday of May next, to answer the complaint of Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car and

Foundry Company, a body corporate, who is a citizen of the State of New Jersey, and have you then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of [SEAL.] the Supreme Court of the United States, this 19th day of March, in the year of our Lord one thousand nine hundred and four.

Issued the 19th day of March, in the year of our Lord one thousand nine hundred and four.

Attest:

CHAS. J. ALLISON,
Clerk U. S. Circuit Court, Northern
District of Alabama.

3 In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

THOMAS G. BUSH, THOMAS A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company, a Body Corporate Organized under the Laws of the State of New Jersey and a Citizen of said State, a Bankrupt Duly Adjudicated by the District Court of the United States Having Jurisdiction of said Bankrupt, and Who Were Duly Appointed Such Trustees by said Court, Plaintiffs,

vs.

ELLIOTT CAR COMPANY, a Body Corporate Organized under the Laws of the State of Alabama and a Citizen of said State, Defendant.

(1.) The said plaintiffs, as trustees in bankruptcy of the Southern Car and Foundry Company, a corporation organized and existing under the laws of the State of New Jersey, and a citizen of said State, and duly adjudicated a bankrupt as aforesaid, claims of the said defendant, a corporation organized and existing under the laws of the State of Alabama, and a citizen of said last named State the sum of one hundred thousand dollars for moneys paid by the said Southern Car and Foundry Company prior to the said adjudication in bankruptcy, and on to-wit, the first day of December, 1902, at the said defendant's request, which sum of money with the interest thereon, is still due and unpaid, and is the property of the said plaintiffs as trustees, as aforesaid.

(2.) And the said plaintiffs, as trustees in bankruptcy as aforesaid, claim of the said defendant the further sum of one hundred thousand dollars for money, on to-wit, the 1st day of December, 1902, and prior to the said adjudication in bankruptcy, received by the said defendant to the use of the said Southern Car and Foundry Company, which sum of money, with the interest thereon, is still due and unpaid, and is the property of the said plaintiffs as trustees, as aforesaid.

(3.) And the said plaintiffs as trustees in bankruptcy, as aforesaid, claim of the said defendant the further sum of one hundred thou-

sand dollars, due from the said defendant, on, to-wit, the 1st day of December, 1902, and prior to the said adjudication in bankruptcy, by account to the said Southern Car and Foundry Company, which sum of money, with the interest thereon, is still due and unpaid, and is the property of the said plaintiffs as trustees, as aforesaid.

4 (4.) And the said plaintiffs as trustees as aforesaid claim of the said defendant the further sum of one hundred thousand dollars for money loaned by the said Southern Car and Foundry Company to the said defendant on to-wit, the 1st day of December, 1902, and prior to said adjudication in bankruptcy, which sum of money with interest thereon is still due and unpaid, and is the property of the said plaintiffs as trustees as aforesaid.

(5.) And the said plaintiffs as trustees in bankruptcy, as aforesaid, claim of the said defendant the further sum of one hundred thousand dollars on an account stated between the said Southern Car and Foundry Company and the said defendant, on to-wit, the 1st day of December, 1902, and prior to said adjudication in bankruptcy, which sum of money with the interest thereon, is still due and unpaid, and is the property of the said plaintiffs as trustees as aforesaid.

(6.) And the said plaintiffs, as trustees in bankruptcy, as aforesaid, claim of the said defendant the further sum of one hundred thousand dollars for merchandise, goods, and chattels sold by the said Southern Car and Foundry Company to the said defendant, on to-wit, the 1st day of December, 1902, and prior to the said adjudication in bankruptcy, which sum of money, with the interest thereon, is still due and unpaid, and is the property of the said plaintiffs, as trustees, as aforesaid.

(7.) And the said plaintiffs as trustees in bankruptcy as aforesaid, claim of the said defendant the further sum of ten thousand dollars, for that on to-wit, the — day of ——, 1899, the said defendant made and executed a contract with the said Southern Car and Foundry Company wherein and whereby the said defendant transferred and assigned to the said Southern Car and Foundry Company, certain contracts it then had with divers parties, one of which was a contract with the Tennessee Coal, Iron & Railroad Company, a body corporate, for the sale by the said last named company to the said defendants of a large amount of pig iron, to be delivered in the then future, to-wit: thirty thousand tons, at and for the price of to-wit, ten ($10.00) per ton, and the said Tennessee Coal, Iron & Railroad Company, from time to time, at the instance of the said defendant, delivered said pig iron to the said Southern Car and Foundry Company under said contract, charging the said defendant therefor at the price fixed by said contract, and that the said defendant collected from the said Southern Car & Foundry Company for said iron at a largely increased price to-wit, twenty-five dollars per ton,

5 which, at the instance of the president of the said defendant and a large stockholder thereof, who was also then the president of the said Southern Car and Foundry Company, and acting as such, was paid by the said Southern Car & Foundry Company,

which sum of money, together with the interest thereon, is still due and unpaid, and is the property of the said plaintiffs, as trustees, as aforesaid.

And the said plaintiffs aver, as a part of each and every one of the foregoing counts, that the said Southern Car and Foundry Company is a body corporate organized and existing under the laws of the State of New Jersey and a citizen of said State, and was duly adjudicated a bankrupt in and by a district court of the United States, having jurisdiction to make such adjudication, and the said plaintiffs were thereafter duly appointed trustees in bankruptcy, and have duly qualified as such, and that the said defendant is a body corporate organized and existing under the laws of the State of Alabama, and a citizen of said last named State.

WALKER, TILLMAN, CAMPBELL & MORROW,
GEORGE D. LANCASTER,
Attorneys for Plaintiffs.

Filed March 19th, 1904.

CHAS. J. ALLISON, Clerk.

Marshal's Return.

Executed by handing a copy of the within writ to J. M. Elliott, Jr., as president of the Elliott Car Company, in the city of Gadsden, Ala., this 21st day of March, 1904.

D. N. COOPER, U. S. Marshal,
By H. G. ASHLEY, Dep. Marshal.

6 Objections to Jurisdiction.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

THOS. G. BUSH, THOS. A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company,

vs.

ELLIOTT CAR COMPANY.

Now comes the Elliott Car Company, who appears specially for the purpose of objecting to the jurisdiction of the court, and shows to the court that the plaintiff Thos. G. Bush is and was at the time of the bringing of this suit a citizen of the State of Alabama; that defendant, The Elliott Car Company, is and was at the time of the bringing of this suit a citizen of the State of Alabama, and defendant does not consent to be sued in the circuit court of the United States for the eastern division of the northern district of Alabama. And defendant says that this court has no jurisdiction of this cause.

Wherefore defendant prays that this suit may be dismissed for want of jurisdiction.

DORTCH, MARTIN & ALLEN,
GOODHUE AND BLACKWOOD,
Defendant's Attorneys, Who Appear Specially for the Purpose of Objecting to the Jurisdiction of the Court.

THE STATE OF ALABAMA, }
Etowah County. }

Before me, C. E. Connor, a notary public in and for said State and county, personally appeared J. M. Elliott, Jr., who being by me duly sworn, deposes and says that the facts stated above are true.

J. M. ELLIOTT, JR.

Sworn to and subscribed before me this 28th day of April, 1904.

C. E. CONNER,
Notary Public.

Filed May 2nd, 1904.

CHAS. J. ALLISON, Clerk.

7 In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

Journal Entry, November 16th, 1904, Minute Book "1," page 109.

THOS. G. BUSH ET AL. }
vs.
ELLIOTT CAR COMPANY. }

This cause coming on to be heard upon the motion to dismiss for want of jurisdiction, the said motion being duly argued at length by attorneys for the respective parties, and the court being fully informed in regard to the same, it was upon consideration adjudged by the court that the motion to dismiss for want of jurisdiction was well taken, and the same was granted it being submitted by the counsel for plaintiff that Thomas G. Bush was a citizen and resident of the State of Alabama as set out in the motion.

8 Bill of Exceptions.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

Be it remembered, that at the fall term, 1904, of the circuit court of the United States for the eastern division of the northern district of Alabama, begun and held at Anniston, Alabama, on the 14th day of November, 1904, the following proceedings were had in a certain cause wherein Thomas G. Bush, Thomas A. Gillispie and Orion L.

Hurlbut, as trustees of the Southern Car & Foundry Company, a body corporate, organized under the laws of the State of New Jersey, and a citizen of said State, a bankrupt duly adjudicated by the district court of the United States having jurisdiction of said bankrupt, and who were duly appointed as such trustees in bankruptcy by said court, were plaintiffs, and the Elliott Car Company, a body corporate, organized under the laws of the State of Alabama, and a citizen of said State, was defendant.

Thereupon, the defendant, The Elliott Car Company, appeared in said court on May 2nd, 1904, and filed his objection to the jurisdiction of said court, and prayed that said suit be dismissed, the said motion and petition being marked in words and figures as set out in a writing hereto attached, marked Exhibit E, and made a part hereof.

Thereupon, on November 16th, 1904, said court sustained the objection of said defendant, Elliott Car Company, to the jurisdiction of said court, and dismissed said suit out of said court for want of jurisdiction, said judgment entered in said cause by said court being in words and figures as set out in a writing hereto attached, marked Exhibit E, and made a part hereof.

Thereupon, upon the entry of said judgment, the plaintiffs duly and separately excepted to the action of said court in sustaining the objection of defendant to the jurisdiction of said court, and in dismissing said suit out of said court.

And this the plaintiff's bill of exceptions to the action of said court not otherwise appearing of record, they now tender, and pray that the same may be signed and made a part of the record of said cause, which is accordingly done, in term time, this 21st day of November, 1904.

HARRY T. TOULMIN, Judge.

9 EXHIBIT "D."

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

THOS. G. BUSH, THOS. A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company,

vs.

ELLIOTT CAR COMPANY.

Now comes the Elliott Car Company, which appears specially for the purpose of objecting to the jurisdiction of the court, and shows to the court that the plaintiff, Thos. G. Bush is and was at the time of the bringing of this suit, a citizen of the State of Alabama; that defendant, The Elliott Car Company, is and was at the time of the bringing of this suit, a citizen of the State of Alabama, and defendant does not consent to be sued in the circuit court of the United

States for the eastern division of the northern district of Alabama. And defendant says that this court has no jurisdiction of this cause.

Wherefore defendant prays that this suit may be dismissed for want of jurisdiction.

(Signed) DORTCH, MARTIN & ALLEN,
GOODHUE & BLACKWOOD,
Defendant's Attorneys, Who Appear Specially for the Purpose of Objecting to the Jurisdiction of the Court.

STATE OF ALABAMA, }
Etowah County. }

Before me, C. E. Conner, a notary public in and for said State and county, personally appeared J. M. Elliott, Jr., who being by me duly sworn deposes and says that the facts stated above are true.

(Signed) JIM ELLIOTT, JR.

Sworn to and subscribed before me on this the 28th day of April, 1904.

C. E. CONNER,
Notary Public.

10 EXHIBIT "E."

THOS. G. BUSH ET ALS. }
vs. }
ELLIOTT CAR COMPANY. }

This cause coming on to be heard upon the motion to dismiss for want of jurisdiction, the said motion being duly argued at length by attorneys for the respective parties, and the court being fully informed in regard to the same, it was upon consideration adjudged by the court that the motion to dismiss for want of jurisdiction was well taken and the same was granted it being admitted by the counsel for plaintiff that Thos. G. Bush was a citizen and resident of the State of Alabama as set out in the motion.

Wednesday, November 16th, 1904.

Filed January 13th, 1905.
CHAS. J. ALLISON, Clerk.

11 Petition for Writ of Error.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

THOS. G. BUSH, THOS. A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company,

vs.

ELLIOTT CAR COMPANY.

To the honorable the judges of said court:

Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut as trustees in bankruptcy, as aforesaid, plaintiffs in the above entitled cause now come, and respectfully show and state unto your honors that on or about the 6th day of November, 1904, this court entered judgment herein, in favor of the defendant herein, against the plaintiffs solely upon the question of jurisdiction, raised by the said defendant by his motion to dismiss this cause for want of jurisdiction, as will more fully appear from the record; and that in and by said judgment, this court held that it was without jurisdiction to hear and determine said cause, and upon that ground and that ground alone, this court sustained the defendant's said motion, and dismissed said cause, as will also appear from the record.

And said plaintiffs further say that in said judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of these plaintiffs, all of which will more in detail appear from the assignment of errors filed with, and made a part of this petition. Wherefore these plaintiffs pray that a writ of error may issue in this behalf, to the Supreme Court of the United States, for the correction of errors so complained of; that the said question of jurisdiction may be duly certified by this court, to the said Supreme Court; and that a transcript of the record, proceedings and papers in this cause pertaining to said question of jurisdiction, that is to say, the summons and complaint, the said motion to dismiss for want of jurisdiction, the bill of exceptions filed in said cause by the plaintiffs, and the judgment rendered therein duly authenticated, may be sent to the said Supreme Court.

JNO. P. TILLMAN,
JNO. B. KNOX,
Att'ys for Plaintiffs.

Filed March 3rd, 1905,
CHAS. J. ALLISON, Clerk.

12 Assignment of Errors.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

THOS. G. BUSH, THOS. A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company,

vs.

ELLIOTT CAR COMPANY.

The said plaintiffs in the above entitled cause, in connection with their petition for a writ of error, filed herewith, and herewith presented and hereto attached, do make and file the following assignments of error, which they aver occurred upon the trial of said cause:

(1.) For that the said circuit court erred in sustaining defendant's motion filed in said cause to dismiss the said cause for want of jurisdiction, and in dismissing said cause.

(2.) For that the said circuit court erred in dismissing said cause upon motion made by defendant for want of jurisdiction.

(3.) For that the said circuit court erred in holding that it was without jurisdiction to hear and determine said cause, and in dismissing said cause out of said court for want of jurisdiction.

(4.) For that the said circuit court erred in the final judgment rendered by it, dismissing said cause.

JNO. P. TILLMAN,
JNO. B. KNOX,
Attorneys for said Plaintiffs.

Filed March 3rd, 1905.
CHAS. J. ALLISON, Clerk.

13 Decree Allowing Writ of Error.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

THOS. G. BUSH, THOS. A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company,

vs.

ELLIOTT CAR COMPANY.

This, the 3rd day of March, 1905, came the plaintiffs in the above entitled cause, and filed herein, and presented to the court their petition, praying for the allowance of a writ of error intended to be urged by them, and praying also that a transcript of the record and

proceedings and papers upon which the judgment herein was required, as stated in said petition, duly authenticated, may be sent to the Supreme Court of the United States; and that such other and further proceedings may be had, as may be proper in the premises.

Upon consideration whereof, the court does, on this day, being in term time, and of the term in which said judgment was rendered, allow the writ of error as prayed for, upon the plaintiffs giving bond, according to law, in the sum of five hundred dollars.

And the court hereby certifies to the Supreme Court of the United States, that the judgment of the said circuit court complained of was a judgment dismissing said cause upon the sole ground that the said court was without jurisdiction to hear and determine the same; and that the only question presented to and decided by the said circuit court in said cause was whether said court had jurisdiction to hear and determine said cause; and this question was decided against the plaintiffs, and by reason thereof, the said cause was dismissed out of said court.

March 3rd, 1905.

HARRY T. TOULMIN, Judge.

Filed March 4th, 1905.
CHAS. J. ALLISON, Clerk.

14 Certificate to Supreme Court of the United States.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama.

THOS. G. BUSH, THOS. A. GILLISPIE, and ORION L. HURLBUT, as Trustees in Bankruptcy of the Southern Car and Foundry Company,

vs.

ELLIOTT CAR COMPANY.

A writ of error to the Supreme Court of the United States having been heretofore at this term of the court allowed to the plaintiffs to review the judgment of this court rendered in said cause at this term, and in said writ of error mentioned, dismissing said cause for want of jurisdiction, but no certificate having been made by this court of the precise question upon which said cause was dismissed; now upon motion of the said plaintiffs, the court hereby certifies to the Supreme Court of the United States the following as the question involved in said judgment, and decided against the plaintiffs, to-wit: The Southern Car & Foundry Company, the bankrupt, being a corporation organized and existing now and at the time of the institution of said suit, under the laws of the State of New Jersey, and a citizen of said State, and the said defendant being now and then a corporation organized and existing under the laws of the State of Alabama, and a citizen of said last named State, and the said Thomas G. Bush, one of the plaintiffs, being then and now a

citizen of the State of Alabama, and the said Thomas A. Gillispie and the said Orion L. Hurlbut, the other plaintiffs, being then and now citizens, one of the State of New Jersey, and the other of the State of Tennessee, and the said suit being in assumpsit for the recovery of a debt or demand, alleged in the complaint to have been due and owing to the said bankrupt, by the said defendant, and at the date of the bankruptcy, has this court jurisdiction of said cause under the bankruptcy act, as amended, and especially, under section 23, sub-division "A," and sub-division "B" of said act as amended.

This question, this court decided in the negative, and thereupon dismissed said cause upon the motion of defendant, as shown by the record.

15 Done, this, the 11th day of March, A. D. 1905, in term time, and of the said term of this court at which said judgment was rendered, the same not yet having been adjourned, and not having expired by operation of law.

HARRY T. TOULMIN, Judge.

Filed Mar. 17th, 1905.
CHAS. J. ALLISON, Clerk.

16 UNITED STATES OF AMERICA:

The President of the United States to the honorable judges of the circuit court of the United States for the eastern division of the northern district of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some one of you, between Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car and Foundry Company, a bankrupt, as plaintiffs, and The Elliott Car Company, a corporation, as defendant, a manifest error hath happened, to the great damage of the said Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy, as aforesaid, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 28" day of April next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, the 29th day of March, in the year of our Lord one thousand nine hundred and five.

[Seal Circuit Court U. S., Nor. Dist. Ala.]

CHAS. J. ALLISON,
Clerk of the said Circuit Court.

Allowed by
HARRY T. TOULMIN, Judge.

16½ [Endorsed:] 13. Thomas G. Bush *et als.* as trustees *vs.* Elliott Car Company Writ of error Filed April 3rd 1905 Chas. J. Allison, clerk.

Served on the defendant by filing a copy of this writ of error, in this office, on this 3rd day of April, 1905.

CHAS. J. ALLISON, Clerk.

17 Bond.

Know all men by these presents, that we, Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car and Foundry Company, a bankrupt, as principals, and The United States Fidelity and Guaranty Co. of Baltimore, Maryland, as surety, are held and firmly bound unto the Elliott Car Company, a corporation, in the full and just sum of five hundred dollars, to be paid to the said Elliott Car Company, its attorneys, successors or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this the 27th day of March, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a regular term of the circuit court of the United States, for the eastern division of the northern district of Alabama, in a suit pending in said court between Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car and Foundry Company, a bankrupt, as plaintiffs, and the Elliott Car Company, a corporation, as defendant, a judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Elliott Car Company, citing and admonishing it to be and appear before the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the said Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car & Foundry Company, a bankrupt, shall prosecute said writ of error to effect, and answer all

damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

T. G. BUSH, as Trustee. [SEAL.]
THOS. A. GILLISPIE, as Trustee, [SEAL.]
By T. G. BUSH.
ORION L. HURLBUT, as Trustee, [SEAL.]
By T. G. BUSH.
THE UNITED STATES FIDELITY & GUARANTY CO., [SEAL.]
By LOUIS V. CLARK, Agent, and
By H. M. ARCHIBALD, Agent.

Approved by
HARRY T. TOULMIN, Judge.

Filed April 3rd, 1905.
CHAS. J. ALLISON, Clerk.

18 UNITED STATES OF AMERICA:

The President of the United States to Elliott Car Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington in the District of Columbia, on the 28th day of April next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern division of the northern district of Alabama, in a certain cause therein pending, wherein Thomas G. Bush, Thomas A. Gillispie and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car and Foundry Company, a bankrupt, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 29 day of March, in the year of our Lord one thousand nine hundred and five.

[Seal Circuit Court U. S., Nor. Dist. Ala.]

CHAS. J. ALLISON,
Clerk U. S. Courts.

19 [Endorsed:] 13. 50 241-2197 Thomas G. Bush *et als.* as trustees *v.* Elliott Car Company Original citation. Northern district Alabama. Received Apr. 3 1905 office of U. S. marshal. Executed the within citation by handing Amos E. Goodhue a copy this 3 day of Apr. 1905 W. A. Greene deputy U. S. marshal. Amos E. Goodhue is one of the attorneys of record W. A. Greene dep. marshal. Returned and filed Apr. 4, 1905. Chas. J. Allison clerk.

20 Certificate.

UNITED STATES OF AMERICA,
Northern District of Alabama.

I, Chas. J. Allison, clerk of the circuit court of the United States, in and for the eastern division of the northern district of Alabama, hereby certify that the foregoing pages, numbered from one to eighteen, is a full, true and correct transcript of the record in a case pending in this court, wherein Thos. G. Bush *et al.* are plaintiffs, and the Elliott Car Company is defendant, as fully as the same appears of record and on file in my office.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 19th day of April, in the year of our Lord one thousand nine hundred and five.

Seal Circuit Court U. S., Nor. Dist. Ala.

CHAS. J. ALLISON,
Clerk U. S. Circuit Court, Northern District of Alabama.

Endorsed on cover: File No. 19,734. N. Alabama C. C. U. S. Term No. 246. Thomas G. Bush, Thomas A. Gillispie, and Orion L. Hurlbut, as trustees in bankruptcy of the Southern Car & Foundry Company, a bankrupt, plaintiffs in error, *vs.* Elliott Car Company. Filed April 27th, 1905. File No. 19,734.